

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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VICTOR TAGLE,

Plaintiff,

vs.

DEPT OF HOMELAND SECURITY,

Defendant.

Case No. 2:15-cv-2506-APG-VCF

**ORDER AND REPORT &  
RECOMMENDATION**

APPLICATION TO PROCEED *IN FORMA PAUPERIS*  
(Doc. #10)

Before the court is Plaintiff Victor Tagle's second application to proceed *in forma pauperis* (Doc. #10), Tagle's amended complaint (Doc. #10-1),<sup>1</sup> and Tagle's motion to appeal the magistrate judge's order (Doc. #11).<sup>2</sup> Tagle was previously granted leave to proceed with this action *in forma pauperis*. (Doc. #2). Pursuant to 28 U.S.C. § 1915(e)(2), the court screens Tagle's amended complaint to determine whether his amended complaint is frivolous, malicious, or fails to state a claim for which relief may be granted. For the reasons stated below, Tagle's amended complaint should be dismissed with prejudice.

**I. Background**

On December 31, 2015, Plaintiff Victor Tagle sued the Department of Homeland Security, seeking a court order that directed the Department of Homeland Security to naturalize Tagle as a United States citizen. (Doc. #1-1). Tagle also filed an application to proceed *in forma pauperis*. This court

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<sup>1</sup> Tagle attached a complaint to his second application to proceed *in forma pauperis*. The court considers the complaint attached to Tagle's second *in forma pauperis* application as an amended complaint.

<sup>2</sup> The court considers Tagle's motion to appeal the magistrate judge's order as an objection to this court's recommendation. LR IB 3-2.

1 granted Tagle's application to proceed *in forma pauperis*, but recommended that Tagle's complaint be  
 2 dismissed for failure to state a claim for which relief may be granted. (Doc. #2).

3 On February 24, 2016, the district judge adopted this court's recommendation and dismissed  
 4 Tagle's complaint. (Doc. #5). Tagle was given until March 24, 2016 to file an amended complaint. On  
 5 March 14, 2016, the court directed the Clerk of Court to mail Tagle copies of this court's  
 6 recommendation (Doc. #2) and the order adopting this court's recommendation (Doc. #5).

7 On March 15, 2016, Tagle filed a second application to proceed *in forma pauperis*. (Doc. #10).  
 8 Tagle attached a form complaint to his second application. (Doc. #10).

## 9 II. Discussion

10 Tagle presents three issues: (1) whether his second application to proceed *in forma pauperis*  
 11 should be granted and (2) whether Tagle's amended complaint should be dismissed

### 12 1. Tagle's Second In Forma Pauperis Application is Denied as Moot

13 This court previously granted Tagle's application to proceed *in forma pauperis*. As Tagle is  
 14 already permitted to maintain this action without paying the application filing fees, Tagle's second *in*  
 15 *forma pauperis* application is redundant. Tagle's second *in forma pauperis* application is denied.

### 16 2. Tagle's Amended Complaint Should Be Dismissed with Prejudice

17 "Through the Immigration Act of 1990 ('IMMACT'), Congress transferred all statutory authority  
 18 to naturalize persons citizens from the judiciary to the Attorney General." *Tesfay v. Holder*, 942  
 19 F.Supp. 2d 1063, 1066 (D. Nev. 2013) (citing 42 U.S.C. § 1421(a)). "Accordingly, IMMACT eliminated  
 20 the judiciary's naturalization authority present under the preceding naturalization system." *Id.* Under  
 21 the current system, "Congress vested in the Attorney General the sole authority to review application for  
 22 citizenship and to issue certificates of naturalization." *Id.*

1 Tagle's original complaint was dismissed as the court lacked the authority to grant the relief  
2 Tagle requested. (Doc. #5). Tagle's amended complaint alleges the same facts as his original complaint  
3 and requests the same relief. (Doc. #10-1). Accordingly, Tagle's amended complaint should be  
4 dismissed for failure to state a claim upon which relief may be granted. As no amendment would cure  
5 the court's lack of authority to grant Tagle his requested relief, dismissal should be with prejudice. *See*  
6 *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

7 ACCORDINGLY, and for good cause shown,

8 IT IS HEREBY ORDERED that Tagle's application to proceed *in forma pauperis* (Doc. #10) is  
9 DENIED.

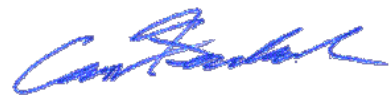
10 IT IS FURTHER ORDERED that Tagle's motion to extend time to respond to report and  
11 recommendation (Doc. #6) is DENIED.

12 IT IS FURTHER RECOMMENDED that Tagle's objections to the report and recommendation  
13 (Doc. #11) be DENIED as moot.

14 IT IS RECOMMENDED that Tagle's amended complaint (Doc. #10-1) be DISMISSED with  
15 prejudice.  
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17 IT IS SO ORDERED and RECOMMENDED.

18 DATED this 5th day of April, 2016.

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21 CAM FERENBACH  
22 UNITED STATES MAGISTRATE JUDGE  
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